IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

Crl.MC.No. 2783 of 2006()

AGAINST THE ORDER DATED 05/08/2006 IN CMP.4586/2006 IN CC.277/2004 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM

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PETITIONER:

RAJALAKSHMI, W/O.MURALEEDHARAN,
(J.J.APARTMENT), COCHIN CORPORATION 44/2112,
FLAT NO.A4, KALOOR BHAGAM, ERNAKULAM,
FROM KUNNATHU HOUSE, NORTH PARAVOOR,
PARAVOOR VILLAGE.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. KRISHNAN, S/O.NARAYANAN,
OLAPPURACKKAL HOUSE, K.S.PURAM KARA,
KADUTHURUTHY VILLAGE.

3. RAJENDRAN NAIR, S/O.BHASKARAN NAIR,
MOOSARIPARAMBIL HOUSE, AYAMKUDI KARA,
MUTTUCHIRA VILLAGE.

4. RAJALAKSHMI, W/O.BALAKRISHNA PILLAI,
MEENAKSHI NILAYAM HOUSE, PAZHAVEEDU TEMPLE BHAGAM,
PAZHAVEEDU KARA, THIRUVAMBADI VILLAGE,
ALAPPUZHA DISTRICT.

5. PANKAJAKSHAN NAIR,
S/O.KUMARAN NAIR, KAMAL NIVAS HOUSE,
VAIKAPRAYAR KARA, VADAKKEMURI VILLAGE.

6. RAJMOHAN, S/O.RAJENDRAN NAIR,
MOOSARIPARAMBIL HOUSE, AYAMKUDI KARA,
MUTTUCHIRA VILLAGE.

BY ADV. SRI.SUNIL CYRIAC
SRI.R.SUDHIR
SRI.JOSE JOSEPH (MANNAR)
SRI.ALEX M. ARAYATH
PUBLIC PROSECUTOR SRI.K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 2783 OF 2006

Dated this the 9th day of January, 2007

ORDER

The petitioner is the 2nd accused in a prosecution for the offences punishable, inter alia, under Sec.409 of the IPC. Cognizance has been taken by the learned Magistrate on the basis of a final report submitted by the police after due investigation. When the matter was posted for trial, the Prosecutor in charge of the case filed certain documents to be received in evidence. These documents were not seized by the police in the course of investigation and was not referred to in the report under Sec.173 of the Cr.P.C. submitted by the Investigating Officer. The reception of the documents was opposed. But, by the impugned order, the learned Magistrate overruled the said objection and directed that the documents can be received in evidence as the documents "are essential for the just decision of the case and for the ends of justice". The petitioner claims to be aggrieved by the order.

2. The procedure that is to be followed is admittedly the one under Chapter XIX-A of the Cr.P.C. relating to

warrant cases instituted on police report. Sec.242(3) of the Cr.P.C. stipulates below:

> "(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution."
>
> (emphasis supplied)

3. It is by now trite that the expression of "all such evidence as may be produced in support of the prosecution" is not limited or circumscribed by the stipulations in Sec.173 of the Cr.P.C. In an appropriate case, the Prosecutor is certainly justified in relying on the documents which have not been seized by the police in the course of investigation and copies of which have not been furnished under Sec.173(5) of the Cr.P.C. The position is beyond controversy and it has been held in so in the decision reported in the **Central Bureau of Investigation v. R.S. Pai** (2002 (2) K.L.T. 149). There is no contention before me that these documents are not relevant or essential for a just decision of the case. The first contention urged is that these documents were not seized in the course of investigation and

were not filed along with the final report under Sec.173 of the Cr.P.C. The further contention is that no proper formal application has been filed by the Prosecutor and the documents have been filed only along with the memo as produced by the de facto complainant through the Prosecutor.

4. It cannot be disputed that the Prosecutor had wanted the documents to be produced and received in evidence. Notwithstanding the fact that these documents were produced by the de facto complainant through the Assistant Public Prosecutor in charge of the case, that technical inadequacy - of a detailed petition supported by an affidavit not being filed by the Prosecutor is, according to me, at any rate, not sufficient to justify the invocation of the powers under Sec.482 of the Cr.P.C. It is by now well settled that the expression “shall” in Sec.173(5) of the Cr.P.C. can be reckoned only as directory and that the powers of the court to receive evidence under Sec.242(3) of the Cr.P.C. is not fettered by Sec.173(5) of the Cr.P.C.

5. The short question that remains is whether any prejudice has resulted by the belated reception of documents at the trial stage. It is not disputed that the documents were produced even before C.Ws.1 and 2 were examined in chief. In

these circumstances, the petitioner cannot complain of any prejudice that has resulted by the production and reception of the documents before the commencement of the trial.

6. In any view of the matter, I am unable to perceive any failure or miscarriage of justice resulting from the impugned order and from the course adopted by the learned Magistrate receiving the documents produced by the de facto complainant through the Public Prosecutor in charge of the case.

7. The challenge raised in this Crl.M.C. cannot, in these circumstances, succeed. This Crl.M.C. is, accordingly, dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge